



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING  
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July 16, 2008

## TECHNICAL STAFF REPORT

*Petition Accepted on June 5, 2008  
Planning Board Meeting of July 31, 2008  
Zoning Board Hearing to be scheduled*

**Case No./Petitioner:** ZB 1068M – Brantly Development Group, Inc.

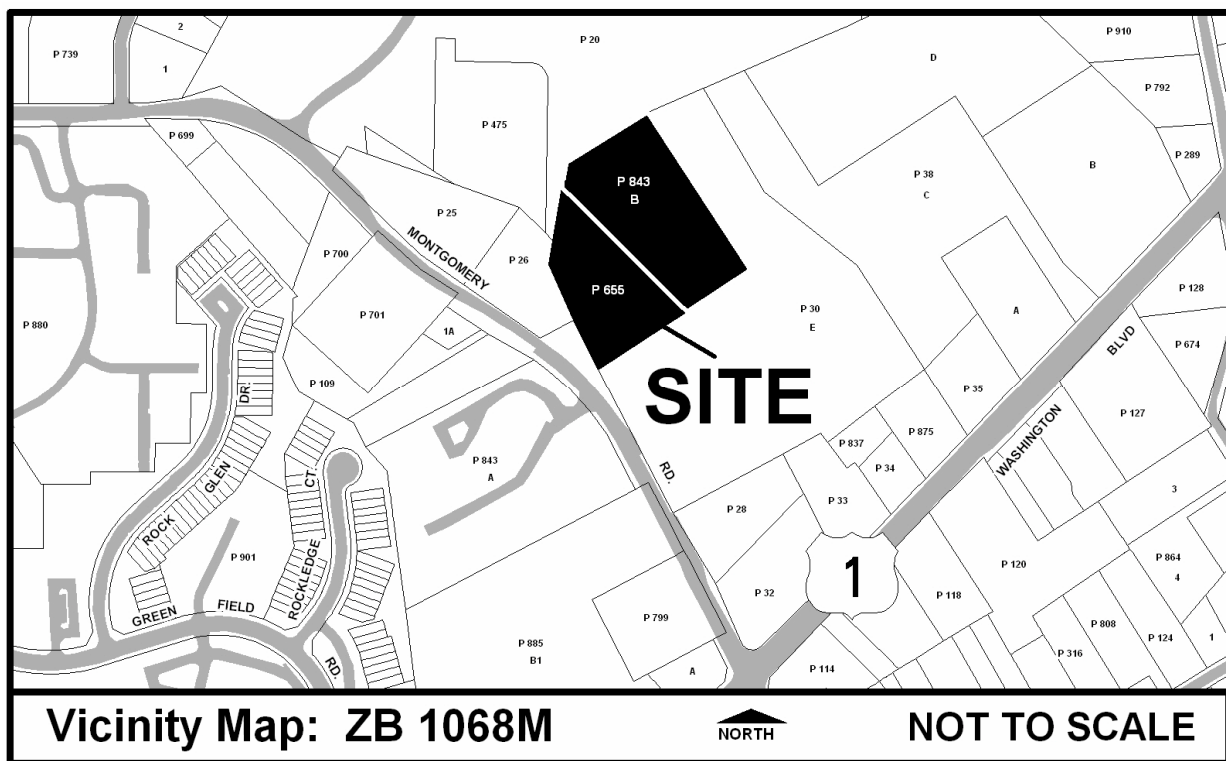
**Location:** First Election District  
Northeast corner of the Elkridge Crossing Way intersection with Montgomery Road; Tax Map 38, Grid 2, Parcel 655; Currently 7211 Montgomery Road (the "Property")

**Area of Site:** 4.5 acres

**Current Zoning:** R-ED      **Proposed Zoning:** R-A-15, with Site Plan Documentation

**Department of Planning and Zoning Recommendation:**

**DENIAL**



PETITIONER: Brantly Development Group, Inc.

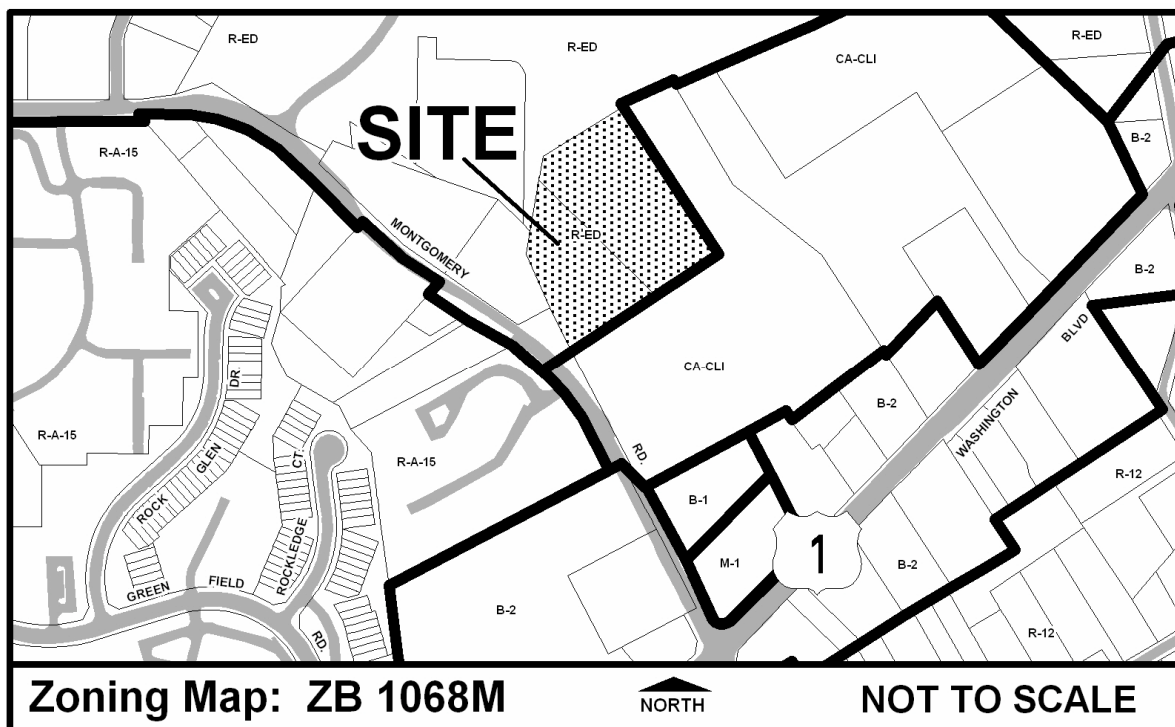
**I. DESCRIPTION OF PROPOSAL**

- # **The Petitioner proposes a Zoning Map Amendment to rezone the Property from the current R-ED (Residential: Environmental Development) District designation to the R-A-15 (Residential: Apartments) District.**
- # **The Petitioner alleges that the current R-ED zoning for the Property is a mistake, and the initial justification given for this allegation is “...the failure to recognize, during the Comprehensive Zoning process, that the Property was essentially landlocked and that the most appropriate and logical development would be in conjunction with the [adjoining] ElkrIDGE Crossing [CAC] development.”**

The Petitioner also maintains that an allegation of mistake is also justified on the basis of the Zoning Board supposedly being unaware that the Property was available for incorporation into the ElkrIDGE Crossing development. It is assumed that the Petitioner means at the time of the 2004 Comprehensive Zoning Plan (“2004 CZP”) for this issue as well.

- # **This request for a Zoning Map Amendment also includes an allegation of substantial change in the character of the neighborhood as a rationale to support the proposed R-A-15 District for the Property.**

The Petitioner refers to a number of items as “...cumulative changes in the neighborhood that have occurred over the past several years...” in order to justify the requested rezoning from R-ED to the R-A-15 District on the basis of change.



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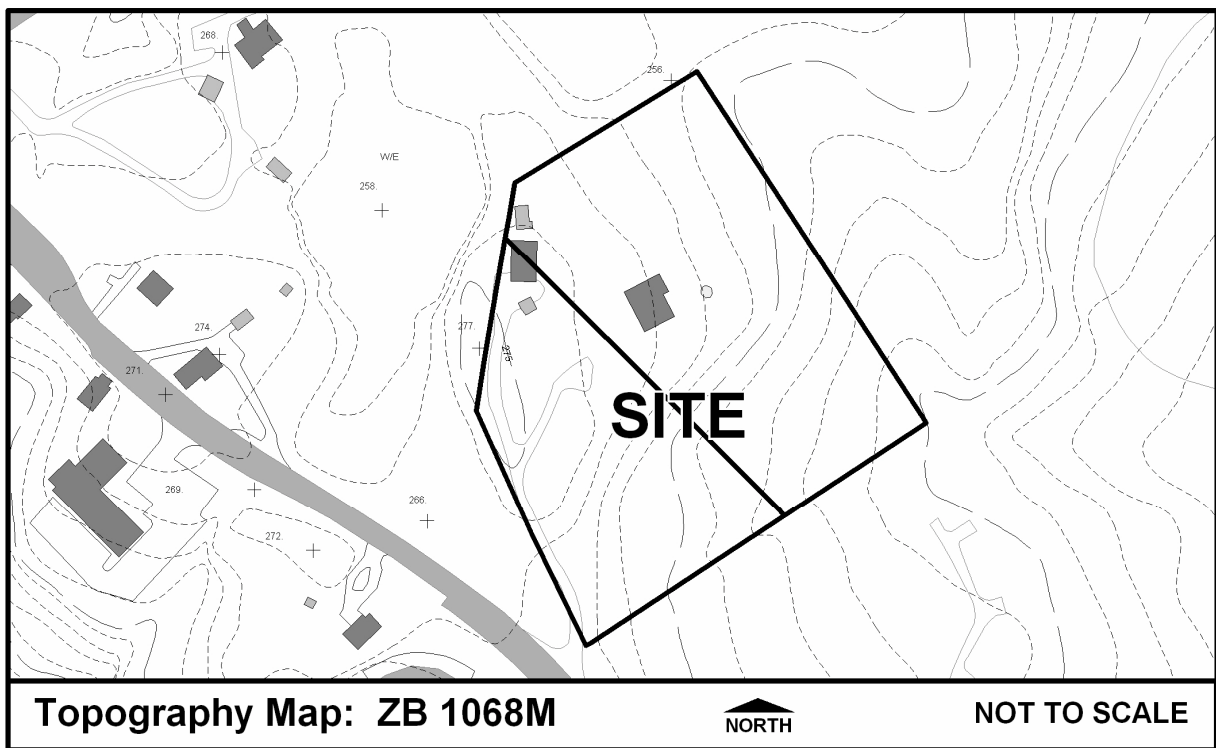
**I. DESCRIPTION OF PROPOSAL (continued)**

These stated items include a reference to the Route One Corridor Plan, unspecified zoning changes in the neighborhood "...during and since..." the 2004 CZP, the relocation of truck traffic from US 1 to Dorsey Run Road, and the "...current need for more housing and employment development as a result of the Base Realignment and Closure (BRAC) effects on the area.

The Petitioner also promotes the rezoning and development of the adjoining Elkrige Crossing project as being an element of change in the character of the neighborhood.

A map was submitted with the petition to illustrate the Petitioner's proposed concept of the "neighborhood" for the Property. This map depicts an "immediate neighborhood" as a circle with an estimated radius of approximately 1,800 feet around the Property, and a "larger neighborhood" which includes almost all of Elkrige and the US 1 corridor area south to the MD 175 intersection.

- # **The neighborhood boundaries that are relevant to this Zoning Map Amendment request, as proposed by the Department of Planning and Zoning, are depicted on the map on Page 5 of this Technical Staff Report.**



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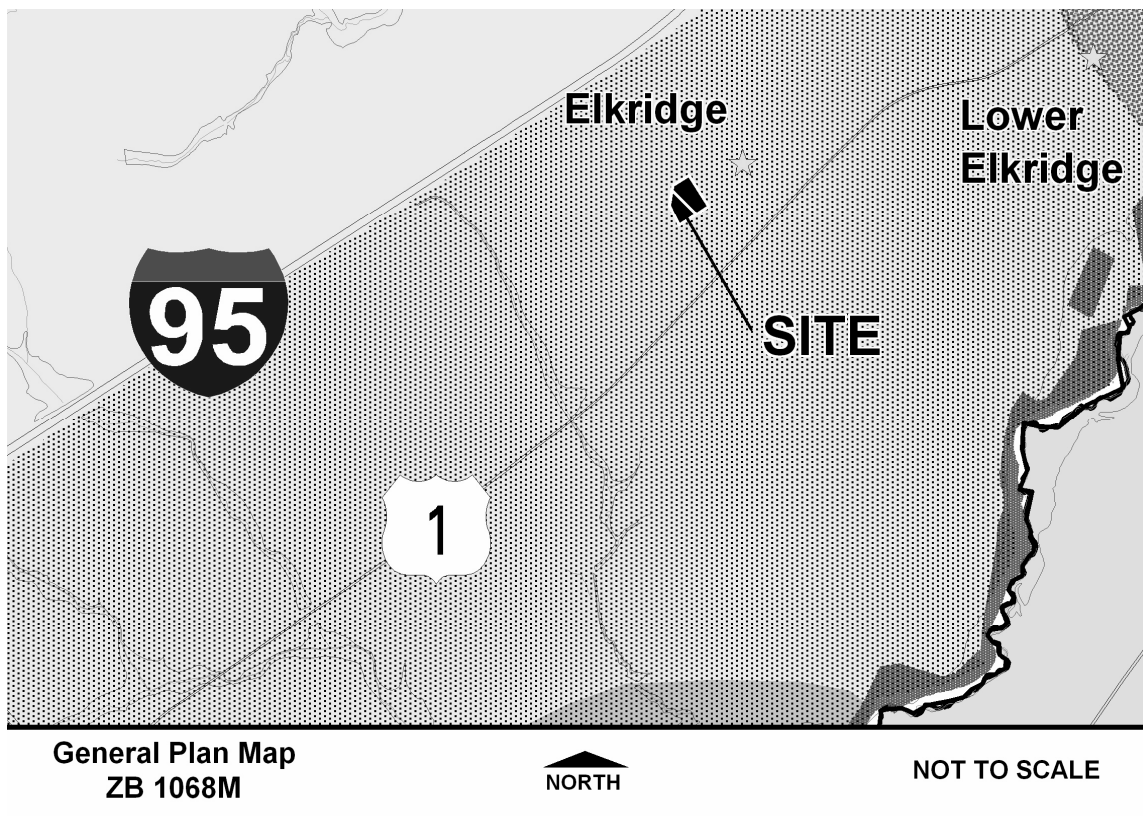
**I. DESCRIPTION OF PROPOSAL (continued)**

- # **This Zoning Map Amendment request is made under the Section 100.G.2. regulations for cases with site plan documentation. The proposed documented site plan, entitled “McMullen Property – Elkridge Crossing Addition” (the “Proposed DSP”) shows a residential development of the Property with 48 townhouses, or single-family attached dwelling units.**

There would be four buildings, each with 12 dwelling units in a “stacked” arrangement consisting of six lower units and six upper units. Two of the buildings would be along the south of the Property, arranged parallel to Elkridge Crossing Way, across from the current buildings along the south side of that road. The other two buildings would be along the east side of the Property, similarly situated across from the buildings on the east side of Daniel John Drive.

- # **As shown on the Proposed DSP, the orientations of the buildings differ. The two buildings that are along Elkridge Crossing Way would have the townhouse fronts facing that road, while the rear of the townhouses which include garages would be on the south side of a small parking lot with 32 parking spaces.**

The other two buildings on the west side of Daniel John Drive would have the facade with the garages facing the road, while the front facade faces west to a sidewalk, and past the sidewalk there would be a relatively steep slope up.



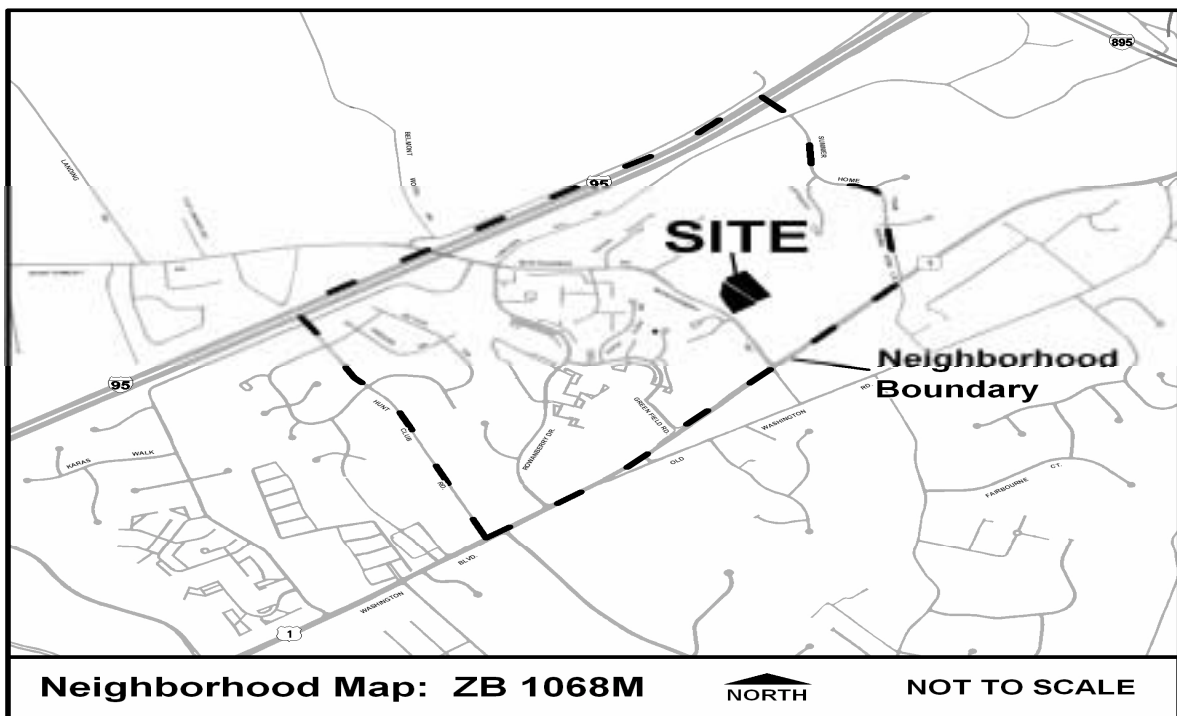
**I. DESCRIPTION OF PROPOSAL (continued)**

- # The remaining land in the northwestern area of the Property, up a slope from all of the proposed buildings, is shown as Open Space. A “Limit of Disturbance” line is depicted relatively close to the small parking lot and to the slope up from the townhouses along Daniel John Drive. If this is accomplished the Open Space could retain the narrow wooded area along the northwest lot line, and the large trees and other vegetation in the more open areas surrounding the existing dwelling on the Property, however, it is likely that much of the existing wooded slope to the south and southeast of the dwelling would be eliminated because of the extent of the proposed townhouse development and the grading that would be necessary.

The plan shows a walking trail amenity in the Open Space. Although it is not specified on the plan whether the existing dwelling and barn are to be removed, in the submitted meeting notes for the March 8, 2008 Presubmission Community Meeting, it alludes to the removal of the dwelling and the potential removal of the barn.

- # There is no parking tabulation on the Proposed DSP. For 48 townhouse units, the Zoning Regulations require a minimum of 96 parking spaces. All of the proposed townhouse buildings on the plan appear to have two parking pads on the rear facades of each double unit, so it is assumed there are two garages on each as well.

If there are two garage spaces and two parking pads for each of the 24 double units, the plan complies with the 96 parking space requirement. Adding the 32 parking spaces in the small parking lot would bring the total to 128 spaces.



**I. DESCRIPTION OF PROPOSAL (continued)**

- # **The plan notes indicate that five dwelling units of Moderate Income Housing Units would be provided for the proposed development of the Property, which would comply with the minimum 10 percent requirement for the R-A-15 District.**

There is no indication in the petition where these units would be located, but the Department of Housing and Community Development policy requires the units to be located on-site.

**II. ZONING HISTORY**

**A. Subject Property**

- # **In the 1961 Comprehensive Zoning Plan, the Property was designated R-20, and this R-20 zoning was retained in the 1977 and 1985 Comprehensive Zoning Plans.**
- # **The Property first became zoned R-ED in the 1993 Comprehensive Zoning Plan and the 2004 CZP retained the R-ED zoning for the Property.**

**B. Adjacent Properties**

- # **The properties to the north of the Property that are currently zoned R-ED have the same zoning history as the Property.**
- # **The property to the east and south of the Property have the same zoning history as the Property up until the 2004 CZP. In the 2004 CZP, this area to the east and south was considered as Amendment No. 38.01, and eventually was approved to be zoned CAC-CLI.**

Originally, Amendment No. 38.01 was submitted as a request to rezone the adjoining 9.9 acre former Parcel 30 from R-ED to R-A-15. According to the records, approximately one year later this request was revised to be a request to rezone Parcel 30 to CAC. The records indicate that all adjoining property owners were notified of this revised request, including the owners of the Property.

Later in the 2004 CZP process, although it is unclear in the records how this evolved, the then POR zoned Parcel 38 to the northeast of Parcel 30 and the Property was included in Amendment No 38.01 as an overall rezoning to CAC-CLI. This CAC-CLI area is now the ElkrIDGE Crossing development.

- # **The properties to the west and southwest of the Property, across Montgomery Road, were zoned R-20 in the 1961 Comprehensive Zoning Plan, were zoned R-A1 (Residential Apartments) in the 1977 Comprehensive Zoning Plan, and this became the R-A-15 District in the 1985 Comprehensive Zoning Plan.**

This R-A-15 zoning was retained in the 1993 Comprehensive Zoning Plan and the 2004 CZP.

### III. BACKGROUND INFORMATION

#### A. Site Description

- # **The Property is an irregularly-shaped parcel which does not have any actual lot frontage on Montgomery Road, as it is separated from the right-of-way by a narrow wedge-shaped portion of the adjoining Parcel 26.**

However, for many years the Property did have driveway access to Montgomery Road over Parcel 26. This was only recently changed by connecting the driveway to Elkridge Crossing Way.

- # **From the road, the driveway rises up a slope to the northeast to a moderately sloped open area in which an existing single-family detached dwelling is located. Approximately 110 feet to the west of the dwelling is a barn which is adjacent to the northwest side lot line. There are scattered large trees and other vegetation in the areas surrounding the dwelling and near the barn. The areas of the Property generally to the east and south of the dwelling are a wooded slope.**
- # **The highest elevations on the Property are along the lot line to the southwest of the barn. From this point, the Property slopes down generally to the east and southeast, and the lowest point is at the southeast corner which is approximately 50 feet lower in elevation than the top of the Property. This drop in elevation begins moderately but becomes more steep beginning slightly beyond the dwelling.**

#### B. Vicinal Properties

- # **Adjoining the north side of the Property is Parcel 20, which is zoned R-ED and is the site of the Elkridge Landing Middle School. The closest areas of the school property are recreation and sports fields.**
- # **To the east and south of the Property is the CAC-CLI zoned Elkridge Crossing development. The adjoining areas of this development are private roads, and across these roads are four-story “stacked” townhouses, with one lower and one upper dwelling unit, that are either under construction or are completed.**
- # **Adjoining to the southwest of the Property is the unimproved, wedge-shaped Parcel 26 that is between the Property and Montgomery Road. To the west of the Property is a relatively large pond, which is mostly located on Parcel 475. Parcel 475 was the subject of Board of Appeals Case No. 88-32E for a two-family dwelling, but it is unknown whether the residential building on this parcel is being used for that purpose currently.**
- # **Across Montgomery Road the properties are zoned R-A-15, and include Parcel 702 which is improved with a single-family detached dwelling, and Parcel 843 which is the site of a multiple-building apartments development.**



### **III. BACKGROUND INFORMATION**

#### **C. Roads**

- # **As stated above, although the Property originally had a driveway entrance on Montgomery Road, recently this access was revised so that the entrance is now on the north side of Elkridge Crossing Way, slightly to the east of Montgomery Road. Elkridge Crossing Way is a private road with approximately 38 feet of paving.**
- # **Visibility from this new driveway entrance appears to be acceptable along Elkridge Crossing Way, which functions as a low volume local road within the Elkridge Crossing CAC development.**

The Elkridge Crossing Way intersection with Montgomery Road was approved as having acceptable sight distance measurements in association with the review of the Site Development Plan for Elkridge Crossing Phase 1.

- # **There is no traffic volume data available for Elkridge Crossing Way, but its volume is anticipated to be relatively low because it only serves the Elkridge Crossing development.**

#### **D. Water and Sewer Service**

- # **The Property is in the Metropolitan District and is within the Existing Service Area for Sewer and the 6 to 10 Year Service Area for Water, according to the Geographic Information System Maps as of June 23, 2008.**

The proposed development on the Property would be served by public water and sewer facilities.

#### **E. General Plan**

- # **The Property is designated Residential Areas and Redevelopment Corridors on the Policies Map 2000-2020 of the 2000 General Plan.**
- # **Montgomery Road is depicted as a Minor Arterial on the Transportation Map 2000-2020 of the 2000 General Plan. Elkridge Crossing Way is not depicted because it is a new private road.**

#### **F. Subdivision Review Committee**

- # **As required by Section 100.G.2.c. of the Zoning Regulations, the site plan documentation included with this petition was evaluated by the Subdivision Review Committee ("SRC"). Subsequent to this evaluation, on June 3, 2008, the Department of Planning and Zoning certified that the development shown on the proposed site plan has the potential to comply with all technical requirements of the reviewing agencies, without substantial changes to the plan, in subsequent subdivision and site development plan stages of review.**



### III. BACKGROUND INFORMATION

#### G. Adequate Public Facilities Ordinance

- # The petition is subject to the Adequate Public Facilities Ordinance. A site development plan for the proposed development is subject to the requirement to pass the tests for housing allocations, adequate road facilities, and adequate school facilities.

### IV. EVALUATIONS AND CONCLUSIONS

#### A. Evaluation of the Petition Concerning the Mistake Rule

- # Although it is true that the Property lacks actual lot frontage on a public road, that fact does not absolutely preclude its development under the current R-ED District zoning.

The issue of having lot frontage on a public road only would become a problem if the Property were to be subdivided, and for that there would always be an opportunity to request a waiver from that particular requirement of the Subdivision and Land Development Regulations. There are quite a number of potential Conditional Use categories in R-ED that could be realized without subdivision, including Age-restricted Adult Housing for example.

It appears probable that an easement might be obtainable over the very narrow southern tip of the adjoining Parcel 26, as that portion of that parcel would not be developable for many other purposes. So even though developing the Property as R-ED may not be an easy process, the potential is not entirely lost, and to declare the Property totally undevelopable as R-ED is not correct.

- # Concerning the Petitioner's allegation that the Zoning Board was unaware that the Property was available for incorporation into the Elkridge Crossing development at the time of the 2004 CZP, the records actually indicate otherwise.

As noted above, Amendment No. 38.01 of the 2004 CZP created the CAC-CLI zoned area adjoining the Property. The records for that amendment clearly show that the owners of the Property at that time were sent written notice of the revision to the Amendment No. 38.01 request asking for a rezoning to the CAC District.

The fact that the owners of the Property did not then come forward and ask to be included in the consideration of Amendment No. 38.01 would more likely be an indication that the Property was not available for incorporation at that time than that it was.

**IV. EVALUATIONS AND CONCLUSIONS (continued)**

**A. Evaluation of the Petition Concerning the Mistake Rule (continued)**

- # **The Property was originally zoned R-ED in the 1993 Comprehensive Zoning Plan. In the 2004 CZP, there was no proposal to rezone the Property in any way; the R-ED zoning for the Property was just continued, as was the R-ED zoning for the adjacent properties to the north and northwest.**

If an R-ED zoning of the Property were a mistake on the basis of the Petitioner's point on lacking lot frontage on a public road, this would have been a mistake of the 1993 Comprehensive Zoning Plan. But in examining the Petitioner's logic on this point further, if lacking lot frontage alone would mean the R-ED zone is a mistake, than on that same basis any zoning district for the Property would have been a mistake. The petition does not substantiate the allegation of mistake.

**B. Evaluation of the Petition Concerning the Change Rule**

- # **The "larger neighborhood" defined by the Petitioner is far too large for the relatively small size of the Property and its relatively low significance in relation to the overall US 1 corridor.**

The "immediate neighborhood" proposed by the Petitioner is more appropriate, and in comparison is not significantly different from the neighborhood as defined by DPZ, although the DPZ version does extend slightly further to the south.

- # **The area of the neighborhood southwest of Montgomery Road, which except for the commercial uses adjacent to US 1 is largely a residential area with apartment developments in the north and single-family detached and attached dwellings further to the south, has been a stable and largely unchanged area for many years.**

- # **In the area of the neighborhood northeast of Montgomery Road, which includes the Property, the only significant modification that has occurred for many years is the rezoning that created the CAC-CLI District and the subsequent development of this CAC-CLI District into the Elkridge Crossing project.**

However, this rezoning to CAC-CLI was accomplished in the 2004 CZP, not afterwards, and because the Elkridge Crossing development has been accomplished under the intended CAC-CLI zoning of the 2004 CZP, this cannot be considered as evidence supporting an allegation of change.

This Elkridge Crossing area of the neighborhood certainly does look different than it did a few years ago, but because this difference was presumed by the approval of the CAC District, it does not substantiate an allegation of substantial change

- # **Therefore, the Department concludes that there has been no substantial change in the character of the neighborhood since the 2004 CZP was approved.**

**IV. EVALUATIONS AND CONCLUSIONS (continued)**

**C. Relation to the General Plan**

- # A Zoning Map Amendment to rezone the Property to R-A-15, a residential district category, would not be inconsistent with the Residential Areas land use designation of the General Plan for this vicinity.**
- # Incorporating a development of the Property as R-A-15 into the design of the Elkridge Crossing CAC development would not be inconsistent with the Redevelopment Corridors land use designation of the General Plan, or the goals of the US 1 corridor revitalization efforts.**

**D. Evaluation of Site Plan Documentation Factors in Section 100.G.2.d.**

1. The Proposed DSP is considered to be in relative compliance with the factor concerning the compatibility of the proposed development with the existing and potential land uses of the surrounding areas. It shows those areas of the Property that are located along the private streets of Elkridge Crossing as being developed in a manner similar to the existing townhouse buildings to the east and south, while the northern and northwestern areas of the Property would remain as an open space buffer to the adjoining R-ED residential parcels.

Although the Proposed DSP may be relatively compatible with the adjacent development, the overall design of the Proposed DSP is not recommended for the reasons noted below in the Evaluation of the Site Plan Design.

2. The issue of whether the Proposed DSP protects the environmental integrity of the subject property and adjoining areas in the location and design of site improvements is somewhat dependent on the point of view of which environmental characteristics are best to be protected.

The proposed development would mostly take place in the wooded, sloped areas in the eastern and southern portions of the Property, removing a significant number of trees, while the more level and open areas to the northwest would be retained as open space. This would be the opposite of what would likely be desired in a development of the Property as R-ED, with the development being in the more level open areas and the wooded, sloped areas preserved. Of course, this issue is somewhat tied to the compatibility issue of the first factor noted above.

3. The development on the Proposed DSP would have access to the private local roads of the Elkridge Crossing development, and would have close access to Montgomery Road at a point that has already been determined to be safe.
4. As noted above, the Proposed DSP would be reasonably compatible with the Howard County General Plan.

**IV. EVALUATIONS AND CONCLUSIONS (continued)**

**D. Evaluation of Site Plan Documentation Factors in Section 100.G.2.d. (continued)**

- # **Before concluding with the evaluation of the Proposed DSP on the Section 100.G.2.d. factors, it should be noted that there is a relatively basic, but significant issue concerning the design of the proposed development in relation to the requirements of the proposed R-A-15 District.**

The proposal is for a development of “stacked” townhouses, which are considered to be single-family attached dwelling units. In the R-A-15 regulations, Section 112.D.1.d. sets the maximum number of single-family attached dwelling units per structure at eight dwelling units. There is an exception for “back to back” dwelling units, but the proposed units do not qualify as “back to back”.

Each of the four buildings proposed on the plan would have 12 dwelling units, which exceeds the maximum of eight. Therefore, although the overall design of the development does not necessarily need to be drastically revised, the buildings would need to be shortened and the number of units in each reduced by four.

**E. Evaluation of the Site Plan Design**

- # **Although the Department of Planning and Zoning recommends denial for this petition, if the Zoning Board should find that a Zoning Map Amendment is justified on the basis of mistake and/or change, the design of the development on the Proposed DSP is not recommended for certain reasons that go beyond the criteria in the site plan documentation factors.**

- # **The principal concern with the design is manner in which the townhouse buildings along Elkridge Crossing Way, and the parking lot behind the buildings, block the proposed open space area so that there is no good connection to or relationship between this open space and the greater existing Elkridge Crossing development to the south and southeast.**

This is an issue which is caused to a great extent by the residential density of the Proposed DSP. Lowering the density and reducing the length of the buildings could allow for a much wider and more clearly defined open space connection along the north side of Elkridge Crossing Way that would likely encourage more residents elsewhere in Elkridge Crossing to use this open space. The design would also be improved by a similar wider open space connection to Daniel John Drive to the east.

- # **A second concern with the design is the unusual, contrary orientation of the buildings in which the buildings along Elkridge Crossing Way face south to the street but the buildings along Daniel John Drive face west up the hill, while the rear of these buildings is on the street. The proposed building thus may relate well to the existing townhouse units within Elkridge Crossing, but orient back to front on the subject Property.**

**IV. EVALUATIONS AND CONCLUSIONS (continued)**

**F. Evaluation of Zoning District**

- # If the Zoning Board should find that a Zoning Map Amendment is justified on the basis of mistake and/or change, the requested R-A-15 District is not an appropriate district for this site because it permits far too much density to allow for a reasonable development design.**

Even though the Petitioner reduced the number of dwelling units that would technically be permitted with the R-A-15 maximum density of 15 dwelling units per acre, the proposed 48 dwelling units is still greater than 5 times the number of dwelling units that would be permitted with the current R-ED maximum density of 2 dwelling units per acre.

If the zoning for the Property were to be changed, the most appropriate zoning district is the R-SC District, which would still allow a townhouse development and would double the now permitted density to 4 dwelling units per acre. At that density, the approximately 18 permitted dwelling units would leave a significant amount of room available to create an improved design for the development, which would result in a better transition to the R-ED properties to the northwest. Retaining the dwelling units along Daniel John Drive and eliminating the units on Elkridge Crossing Way would be preferable.

**V. RECOMMENDATION**

For the reasons noted above, and mainly that the petition does not sufficiently substantiate the allegations of change or mistake to justify the request, the Department of Planning and Zoning recommends that the request to rezone the Property from R-ED to R-A-15, be **DENIED**.

 07/17/08  
Marsha S. McLaughlin, Director Date

MM/JRL/jrl

**NOTE: The file on this case is available for review at the Public Service Counter in the Department of Planning and Zoning.**